***THE HONOURABLE SRI DEVINDER GUPTA**

THE CHIEF JUSTICE

AND

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

–

+W.A. NO. 218 OF 2005

% 16-02-2005

#R.Sankar Naik, S/o Ramla Naik

..PETITIONER.

VS.

$ 1. R.CHOWLA NAIK AND THREE OTHERS.

..RESPONDENTS.

! COUNSEL FOR THE APPELLANT: Mr. K.SRINIVAS

^ COUNSEL FOR RESPONDENT NO.1: N.CHANDRASHEKHAR REDDY

COUNSEL FOR RESPONDENT Nos. 2 to 4: G.P. FOR CIVIL SUPPLIES.

< Gist :

> Head Note :

? CITATIONS :

1. 1996(1) APLJ 285 (HC)

2. 1995 (2) APLJ 482 (HC)

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE SIXTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, CHIEF JUSTICE

and
THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT APPEAL No. 218 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 29/12/2004 in WP No. 24305 OF 2004 on the file of the High Court.)

Between:

R. Sankar Naik, S/o Ramla Naik,
R/o Basinepalli Thanda, Gooty Mandal, Ananthapur District.

..... APPELLANT

AND

1. R. Chowla Naik, S/o Lakshma Naik,
r/o Basinepalli Thanda, Gooty Mandal, Ananthapur District.
2. The Joint Collector, Ananthapur District, Ananthapur.
3. The Revenue Divisional Officer, Ananthapur, Ananthapur District.
4. The Mandal Revenue Officer, Gooty Mandal, Ananthapur District.

.....RESPONDENTS

Counsel for the Appellant: Mr. K.SRINIVAS

Counsel for Respondent No.1:Mr.N.Chandrashekhar Reddy

Counsel for Respondents 2 to 4: G.P. for Civil Supplies.

The Court made the following :

ORAL JUDGMENT:

(per Honourable Sri Devinder Gupta, the Chief Justice)

The Appeal is against the order passed by the learned Single Judge allowing the writ petition of the first respondent, thereby, setting aside the order of suspension and making the appeal preferred by the first respondent before the Joint Collector as infructuous.

On 16.9.2004, a show-cause notice-cum-suspension order was served upon the first respondent by the Revenue Divisional Officer, Anantapur, calling upon the first respondent to show cause why his authorization as a fair-price shop dealer be not cancelled on three charges, and, considering the gravity of the charges, first respondent's authorization was put under suspension and the Mandal Revenue Officer, Gooty was directed to make alternative arrangements to facilitate the supply of commodities to cardholders of Basinepalli thanda. Consequent upon the passing of the said order, the appellant herein was appointed as temporary fair price shop dealer.

Feeling aggrieved by the order of suspension, appeal was preferred by the first

respondent before the Joint Collector. On 23.12.2004, writ petition was filed by the first respondent to declare the action of the Joint Collector, Anantapur, in not disposing of the appeal as bad in law with further direction against the Revenue Divisional Officer to complete the enquiry as expeditiously as possible and for a consequential direction to respondents to permit the writ petitioner-first respondent to continue as fair-price shop dealer.

The writ petition came up for admission before the learned Single Judge on 28.12.2004 and without calling for any counter-affidavit from the respondents in the writ petition, on 29.12.2004, writ petition was disposed of. In other words, no opportunity was ever given to the respondents in the writ petition to justify their action as to why there was delay in conduct of enquiry or why an order of suspension should not be interfered with in exercise of writ jurisdiction. Learned Single Judge noticed the fact that order of suspension was passed on 16.9.2004 on the allegations that the writ petitioner was collecting higher price than the authorized, he was supplying kerosene less in quantity than the entitlement and had not distributed rice under A.A.Y. Scheme. Learned Single Judge also noticed the fact that appeal had been preferred, which was pending before the Joint Collector and that more than three months had elapsed, but the appeal had not been disposed of. Therefore, relying upon the decision of a Division Bench of this Court in **Joint Collector, Kurnool v. A.Neelima** , learned Single Judge held that except where extraordinary circumstances exist, the suspension of authorization of a fair price shop dealer cannot be continued beyond 90 days. Learned Single Judge also observed that the order of suspension was not ordered as a measure of pending enquiry, but it was in the nature of penalty and such an order could not have been passed without following the procedure prescribed in clause 5(4) of the Andhra Pradesh Public Distribution System Control Order, 2001. Thus, instead of granting main prayers as made in the writ petition for issuing direction to the Joint Collector to dispose of the appeal within a specified time or to expedite the enquiry proceedings, the learned Single Judge straight away proceeded to set aside the order of suspension itself and held the appeal before the Joint Collector to have been rendered infructuous.

The appellant had felt aggrieved by the order of the learned Single Judge and filed this appeal by seeking leave, which was granted after hearing the parties. We also observe that the learned Single Judge failed to correctly follow the ratio of the

decision in **A.Neelima's case (1 supra).** In the said case, appeal before the Division Bench was against the order of the learned Single Judge, who had held that the suspension of fair price shop dealer would be for a maximum period of 90 days and if enquiry initiated consequent upon suspension is not concluded within that period, suspension shall stand automatically revoked. Appeal against such order was filed by the Joint Collector, Kurnool on the ground that there was no such time limit fixed in the rules. In the meanwhile, the appeal which had been carried by the fair price shop dealer before the Joint Collector against the order of suspension had been allowed holding both the charges framed against the dealer as not warranted and the fair price shop dealer was continuing as such, and, therefore, expressing apprehension that the order of learned Single Judge might be misinterpreted for being applied as precedent, clarification was sought. The Division Bench, therefore, made it clear that observations of the learned Single Judge made in that case were in the context of the case before him only and shall not apply as a general rule. However, the Division Bench agreed with the view of the learned Single Judge that the order of suspension cannot be used as a pretext for indefinite postponement of operation of fair-price shop dealership making it, in effect, as cancellation of dealership, and, an order of suspension like any other executive order has to be founded upon fair play and lack of arbitrariness and the continuation of the order of suspension indefinitely is arbitrary. The Division Bench, however, put a word of caution that what is a reasonable period of suspension will vary from case to case depending upon various factors, though, more often than not, period of 90 days ordinarily may be sufficient to conclude the enquiry. Thus, the learned Single Judge totally misunderstood the ratio of the decision of the Division Bench in **A.Neelima's case (1 supra),** and proceeded to set aside the order of suspension. Learned Single Judge also lost sight of the decision of this Court in **B.Maheswaramma v. M.R.Ramasubbamma** that High Court should not issue any interim order permitting the petitioner to continue to function as a dealer. This decision of the Division Bench appears to be on sound principles of law that ordinarily there cannot be suspension of an order of suspension. Suspension can never be treated as a punishment. Another Division Bench of this Court in Writ Appeal No. 2003 of 2004 (**P.V.Adenna v. Smt. B.Nagarathnamma and others**), decided on 10.12.2004, had also set aside the order of learned Single Judge, by which order the learned Single Judge had set aside the order of suspension, or, had, in other words suspended the order of suspension pending enquiry.

In the instant case, as noticed above, no opportunity was allowed to respondents in the Writ Petition to justify their action. Writ Petition was taken-up and on the very next day, it was disposed of. The only material before the learned Single Judge was the affidavit of the Writ Petition. Basing upon that, instead of granting reliefs prayed for in the writ petition, namely, direction to expedite the disposal of the appeal by the Joint Collector and to expedite the enquiry, learned Single Judge proceeded to quash the order of suspension. This order is wholly untenable in law and is liable to be set aside. Consequently, Writ Appeal is allowed and the impugned order is set aside. Resultantly, appeal filed by the writ petitioner before the Joint Collector against the order of the Revenue Divisional Officer, Anantapur shall stand revived, and, we will dispose of the Writ Petition of the first respondent with direction to the Joint Collector to hear and dispose of the appeal within a period of one month from the date of the receipt of the writ order from this Court. No costs.

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DEVINDER GUPTA, C.J.

16.2.2005.

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B.SESHASAYANA REDDY, J.

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LR COPIES TO BE MARKED: YES

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5. The Mandal Revenue Officer, Gooty Mandal, Ananthapur District.

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